

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN CHIARELLO,

Plaintiff, Appellant

-against-

EDWARD BOHLINGER, Correspondence Officer,
and KVIN J. GALLAGHER, Librarian at
Greenhaven Correctional Facility..

Defendant-Appellees

STATE OF NEW YORK)

: SS:

COUNTY OF CLINTON)

FEB 24 1978

PROOF OF SERVICE

76-2121

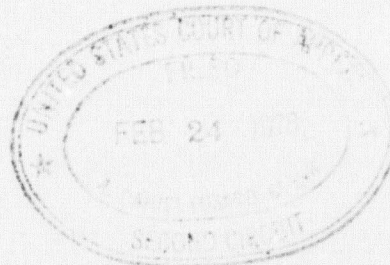
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PB S

I John Chiarello, plaintiff hereby affirm these papers with
the undersigned date of notarization are true and accurate copies
of same enclosed herein that have been served Via United States
Mail, upon all respondent parties..

Copy to:

David L. Birch
Deputy Assistant Attorney General
Two World Trade Center
New York, New York 10047.

To the Clerk of the Court of Appeals..



Respectfully Submitted

John Chiarello
John Chiarello

Sworn to before me this day 20
of February 1978..

NOT AVAILABLE
Notary Signature

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN CHIARELLO,

Plaintiff-Appellant,

86-2121

-against-

EDWARD BOHLINGER, Correspondence officer,
and KEVIN J. GALLAGHER, Librarian of
Greenhaven Correctional Facility..

Defendant-Appelles

STATE OF NEW YORK)

: ss:

COUNTY OF CLINTON)

TRAVERSE TO THE RETURN

Comes the Plaintiff-Appellant and for his traverse to respondent's answer and return states:

1..Petitioner denies that part of what the Assistant Attorney General stated on page 4 of his brief submitted to the Court on February 10,1978 in opposition to the appellants brief..Reference is made on that page by the Assistant Attorney General to (T43 and t-46) that the petitioners witness stated: "that the narrator of the story who is the Appellant was Schizophrenic..The Assistant Deputy Attorney General has not stated properly what McElroy said on (T-43), at line 5.. It was thus what he said: "And in the context of telling the story of the mistreatment he becomes involved in ascribing what he calls his Schizophrenia to two sources..One source is psychological - - I think I can use the word - - and seems to involve a muddle between his Unconscious and his conscious mind..That is what he says"..

The other source which he ascribes as a cause of his schizophrenia,, which is why he is in the place in the first place, is Satan..So that the story has I suppose you can say a Religious Dimension".

It can be certain that what the Attorney General implied, was that McElroy meant that this petitioner the author of "Schizophrenia

"And The Monster" appeared to be suffering with Shizophrenia at the time that McElroy testified at Appellants trial. A Shizophrenic author who was writeing "S hizophrenia And The Monster".. This just wasn't the facts and the Assisstant District Attorney should be admonished for making such an implication.. For insinuating what the record did not suggest.. The Assisstant Attorney General even suggested to the court about a referal about what McElroy was suppose to have testified perhaps about something concerning the Narrator to be suffering with Shizoprenia at (T46). There is no such indication on page 46 of the trial minutes that McElroy indicated anything about the way that the Appellant Author of "Shizophrenia And The Monster" May have been suffering with Shizophrenia at any time during the Authors life.. In fact, on line 5 on page 46, McElroy stated, that the story had considerable power. The complete Description of the narrator by McElroy on page 46 of the trial hearing minutes exposes the writer as as with an exellent ability to convey an urgency of despair, and the story at a number of points is immediately detailed so that the reader really sees and is there; at line 20 same page..

The Attorney General has extracted from the record on page 5 of his February 10, 1978 brief, that "Bohlinger the defendant had the article in his possession from four to four and one-half hours and never saw it again. (T57). At the same page (T57), Gallagher the Attorney General testified-that he "Recieved the article around 2:P.M... On Vovember 14, 1974 (T66), that he glanced at a couple of pages of it (T67), and that early the next morning Chiarello told him that he wanted the article back because he missed the deadline (T67-68).. But see page two of Mr. Birch's memorandum of ~~saw~~ in support of defendants' motion to dismiss dated May 17, 1975 at lower page 2. The Assisstant Attorney General Says: "Although not relevant for this motion, the delay here was, in fact approximately two days, not the fourteen alleged by plaintiff..

So it appears at this point, that Mr. Birch is confusing his own

statement with the statements employed by the defendants Gallagher, and Bohlinger. By Bohlinger (T56), he had testified ~~had~~ had received the article in question on November 14, 1974 (T56,59) and that at 1:P.M. on that day he gave the article to school officials in charge since he had been told by the Superintendent and other officials that approval was needed before articles could be sent out of the prison (T57).

By Gallagher..He testified that he received the article around 2:P.M. On November 14, 1974 (T66), that he glanced at a couple of pages of it (T67) and that early the next morning Chiarello told him that he wanted the article back because he has missed the deadline (T67-68)..

Gallagher's testimony was that this appellant the next morning told him that he wanted the article, and that it was ~~not~~ on the ~~the~~ fourteen day, that I then asked for it to be returned. From the next morning to the two days stated in the Attorney General's brief dated March 17, 1975, that the appellant retrieved his story from Gallagher was a miscalculation of time. Far cry from the Next morning!. The Attorney General's facts get confusing at times..

At page 9 of the Attorney General's brief for the appellees dated February 10, 1978 at lower page he says: "Whether he was entitled to damages is the only proper issue on Appeal.. But see lower page 2 of the Memorandum of Law in support of defendant's motion to ~~dismiss~~ dated March 17, 1975, the Attorney General says: "Since he withdrew his article, he certainly has suffered No Damage" The Attorney General now claims to this court that "Whether he was entitled to Damages is the only proper issue on appeal that this court should consider. This court should consider the complete arguments of Law which this Appellant has put forth..

CONCLUSION

The difference of time and the confused way of events that were put forth in each of the Attorney General's briefs, should indicate the disparity as to just what the Attorney General had interpreted about

the facts. The order of the District Court should be reversed in all respects.

Respectfully Submitted

John Chiarello
John Chiarello

Sworn to before me this 20 day
of February 1978..

Not Available
Notary Signature